

REMARKS

Before entry of this Amendment and Response, the status of the application according to the pending Office action is as follows:

- Claims 1-4, 6-7, 9, 13-16, and 26-28 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,177,885 to Marmonnier (hereinafter “Marmonnier”).
- Claims 5 and 10-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Marmonnier in view of International Application Publication No. WO 95/22917 to Oreck (hereinafter “Oreck”).
- Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Marmonnier in view of U.S. Patent No. 4,694,592 to Baggio (hereinafter “Baggio”).
- Claims 8 and 20-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Applicants hereby amend claims 1 and 26, without prejudice, as shown in the preceding Listing of Claims. Support for these amendments may be found in the specification as filed, and at least in paragraphs [0040] and [0054]-[0060], of the published application. Claims 1 and 26 are further amended to include the subject matter of dependent claim 6, as originally filed. Applicants also hereby add new claims 29-34 and cancel claim 6. Support for new claim 29 can be found at least in claims 1-2 and 8 as originally filed. Support for new claims 30-33 can be found at least in paragraphs [0037]-[0038], [0052]-[0053], and [0062]-[0063], of the published application. Support for new claim 34 can be found at least in claims 1, 9, 10, and 12, as

originally filed, and paragraphs [0014] and [0040], of the published application. No new matter has been added thereby.

In view of the above amendments and following remarks, Applicants respectfully request reconsideration and withdrawal of all grounds of rejection and objection and passage of claims 1-5 and 7-34 to allowance in due course.

1. Claims 1-4, 6-7, 9, 13-16, and 26-28 are rejected under 35 U.S.C. § 102(b) as being anticipated by Marmonnier. Applicants have cancelled claim 6, thereby rendering the rejection moot with respect to that claim. Applicants respectfully traverse this rejection as applied to the remaining claims, as amended.

Briefly, Marmonnier appears to disclose a device for closing and clamping a ski boot. The device includes a front cuff 15, a rear cuff 20, and a saddle 30, all connected to a shell 1. The front cuff 15, rear cuff 20, and saddle 20 can pivot about axes 23, 22, and 31 respectively. The front cuff 15 and rear cuff 20 are linked through a flexible cable 50, which passes via deflectors 53 to connect to a lever 40. The ski-boot is closed by pushing the saddle 30 towards the front and top. This articulates the lever 40, which rotates about the pin 26 and locks the lever 40 into a hook 38 attached to the saddle 30. See Marmonnier, column 3, line 4 to column 4, line 18, and FIGS. 4-6.

Applicants' amended independent claim 1 recites a tightening element coupled to a closure panel wherein "*the tightening element operatively retaining the shoe on the foot by biasing the closure panel against the instep area along a substantially downward and rearward directed load path.*" Applicants respectfully submit that Marmonnier fails to teach or suggest such a structure, but rather appears to teach a ski boot in which a front cuff 15 is connected by a

flexible cable 50 from a fixed end 51 towards a deflector 53, with a loading force directed in a substantially **upward** and rearward direction, as shown in FIGS. 1, 4, 5, and 6. The loading force applied to the front cuff is directed from the fixed end of the cable to the deflector, with this force shown in FIGS. 1, 4, 5, and 6 to always be in a upward and rearward direction.

Further, the ski boot of Marmonnier acts to clamp the bottom of the leg (Marmonnier at column 2, lines 8-20) and not the instep area, as described and claimed by Applicants.

Applicants' amended independent claim 1 further recites a closure panel including "*a side region projecting to at least one of a lateral front side and a medial front side of the shoe, the side region of the closure panel attached to at least one of a lower forefoot portion of the upper and a sole of the shoe.*" Applicants respectfully submit that Marmonnier fails to teach or suggest such a structure, but rather teaches a ski-boot where the front cuff 15 is connected to the rear cuff 20 at a pivot point 23, with the rear cuff 20 connected to the ski-boot at the area of the plantar arch (Marmonnier at column 3, lines 12-20). The front cuff 15 of Marmonnier does not include "*a side region projecting to at least one of a lateral front side and a medial front side of the shoe,*" and is not "*attached to at least one of a lower forefoot portion of the upper and a sole of the shoe.*"

Further, Applicants' dependent claim 3 recites a closure panel including "*a side region extending to at least one of a lateral rear side and a medial rear side of the shoe for connecting the closure panel to the tightening element.*" Applicants respectfully submit that Marmonnier also fails to teach or suggest such a structure, but rather teaches a ski-boot where the front cuff 15 is connected to the cable 50 at ends 51, 51a located on the front cuff 15. The connections of Marmonnier are located near the front of the front cuff 15, and there are no side

regions extending to a side of the shoe ***“for connecting the closure panel to the tightening element.”*** See FIGS. 2 and 4 of Marmonnier.

Applicants’ dependent claim 4 recites a shoe including ***“at least one of a lateral receiving element and a medial receiving element, wherein a portion of the closure panel is slidable within the receiving element when the tightening element is operated to bias the closure panel against the instep area of the upper.”*** Applicants respectfully submit that Marmonnier fails to teach or suggest such a structure, but rather teaches a ski-boot that does not contain any receiving elements and, in particular, receiving elements where ***“a portion of the closure panel is slidable within the receiving element.”***

Thus, Marmonnier does not teach or suggest a closure panel biased against an ***“instep area along a substantially downward and rearward directed load path”*** and comprising ***“a side region projecting to at least one of a lateral front side and a medial front side of the shoe, the side region of the closure panel attached to at least one of a lower forefoot portion of the upper and a sole of the shoe.”*** as recited in Applicants’ independent claim 1. Because claims 2-4, 7, 9, and 13-16 depend, either directly or indirectly, from independent claim 1, and include all of the limitations thereof, Applicants respectfully submit these claims are allowable as well. Applicants also submit that dependent claims 3 and 4 are independently allowable, at least for the reasons outlined above.

Applicants’ amended independent claim 26 recites ***“a closure panel disposed about an instep portion of the shoe”*** and a tightening element for adjusting the pressure applied on the instep portion of the shoe that has ***“a primary loading path disposed in a substantially downward and rearward direction.”*** As describe above, Marmonnier fails to teach or suggest

such a structure, but rather appears to teach a flexible cable that pulls a front cuff in a substantially **upward** and rearward direction, as shown in FIGS. 1, 4, 5, and 6, to clamp the lower leg.

Moreover, Applicants' amended independent claim 26 also recites a closure panel comprising "***a side region projecting to at least one of a lateral front side and a medial front side of the shoe, the side region of the closure panel attached to at least one of a lower forefoot portion of the upper and a sole of the shoe.***" Applicants respectfully submit that Marmonnier fails to teach or suggest such a structure, as described above with respect to Applicants' independent claim 1.

Thus, Marmonnier does not teach or suggest a tightening element that has "***a primary loading path disposed in a substantially downward and rearward direction***" to adjust pressure applied on the instep portion of the shoe and a closure panel comprising "***a side region projecting to at least one of a lateral front side and a medial front side of the shoe, the side region of the closure panel attached to at least one of a lower forefoot portion of the upper and a sole of the shoe,***" as recited in Applicants' independent claim 26. Because claims 27 and 28 depend directly from independent claim 26, and include all of the limitations thereof, Applicants respectfully submit these claims are allowable as well.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-4, 7, 9, 13-16, and 26-28 under 35 U.S.C. §102(b) based on Marmonnier.

2. Claims 5 and 10-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Marmonnier in view of Oreck. Applicants respectfully traverse this rejection as applied to the claims, as amended.

Briefly, Oreck appears to describe a shoe 10 having a sole 15, an upper 20, a tongue 25, a lace 30, redirection devices 40, ankle tubes 50, a heel tube 55, and tongue tubes 45, wherein the shoe laces 30 secure the foot of the wearer in the shoe by means of being laced through a series of tongue tubes 45 and redirection devices 40. The redirection devices 40 are positioned on the perimeter of the sole 15, while the tongue tubes 45 are attached at the center of the upper 20 generally on the center of the tongue or tongue portion 25 of the shoe. See Oreck, page 4, line 12 to page 5, line 6.

Applicants respectfully submit that the disclosure of Oreck fails to cure the deficiencies of Marmonnier with respect to independent claim 1, as outlined in section 1 above. Specifically, Oreck fails to teach, suggest, or motivate one skilled in the art to contemplate “***a tightening element coupled to the closure panel and arranged at a heel region of the shoe, the tightening element operatively retaining the shoe on the foot by biasing the closure panel against the instep area along a substantially downward and rearward directed load path.***” Applicants respectfully submit that the tightening element of Oreck (i.e., the ends of the laces) is located on the tongue of the shoe and not at the heel of the shoe, and that the force between the end of the laces and the heel tube is in a forward direction, as shown by the arrows in FIG. 10 of Oreck.

Further, there is no motivation or suggestion to include the tubes of Oreck to modify the ski boot of Marmonnier. In the ski boot of Marmonnier, the location and angle of the flexible cable, between the front cuff and the deflector, changes with respect to the collar and front cuff of the ski boot as the boot is tightened, as shown in FIGS. 1, 4, 5, and 6. Inserting the flexible cable into a tube attached to the ski boot in a set location and orientation would modify the positioning of the cable as the boot is closed and may, in fact, hinder the loading provided by the

flexible cable. As such, there is no motivation for one skilled in the art to modify the ski boot of Marmonnier to include the tubes of Oreck.

Moreover, Applicants respectfully submit that the disclosure of Oreck fails to cure the deficiencies of Marmonnier with respect to dependent claim 5. Specifically, Oreck fails to teach, suggest, or motivate one skilled in the art to contemplate a receiving element “*wherein the receiving element encompasses a rear portion of the upper from below the upper.*” Applicants respectfully submit that the shoe of Oreck does not include receiving elements for receiving a portion of the closure panel (as recited in claim 4, from which claim 5 directly depends) and, therefore, can not disclose a receiving element for receiving a portion of the closure panel that “*encompasses a rear portion of the upper from below the upper.*”

The Office action states that Oreck teaches a cable that can be “sheathed” and “extend below the insole (shown in Figure 6).” Office action, page 4. Applicants are unable to identify in Figure 6, or anywhere in Oreck, disclosure related to a receiving element that “*encompasses a rear portion of the upper from below the upper.*” Figure 6 of Oreck discloses the use of “pressure displacement strips 105, on the upper 20, for displacing the pressure of the laces over a large area.” See Oreck, page 7, lines 11-15. Oreck appears to disclose that the laces may run under the sole; however, the laces are not a receiving element or a closure panel.

Additionally, Applicants submit that the sheath of Oreck does not constitute a receiving element “*encompassing a rear portion of the upper from below the upper.*” Applicants include a “sheathed” cable 40 that is a separate component and performs a different mechanical function to Applicants’ receiving element 90. In fact, the sheath covers the lace, not the closure panel. Therefore, the sheath can not be a receiving element for receiving a portion of the closure panel.

Applicants, therefore, submit that neither Marmonnier nor Oreck, alone or in proper combination, provide the teaching, suggestion, or motivation for one skilled in the art to arrive at Applicants' invention, as recited in independent claim 1. Because claims 5 and 10-13 depend indirectly from independent claim 1 and include all of the limitations thereof, Applicants respectfully submit that claim 5 and 10-13 are allowable as well. Applicants also submit that dependent claim 5 is independently allowable, at least for the reasons outlined above.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 5 and 10-13 under 35 U.S.C. § 103(a) as being unpatentable over Marmonnier in view of Oreck.

3. Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Marmonnier in view of Baggio. Applicants respectfully traverse this rejection as applied to the claims, as amended.

Briefly, Baggio appears to describe a closure device for rear entrance ski-boots. The device includes a lever 1 that is pivotably attached to a rear portion 2 of a ski-boot 4. The lever 1 includes a block 11 that is releasably securable at different points along the lever. The block 11 engages a cable 12 that is connected through a locking detent 18 to a boot shell 3. The locking detent 18 connects to a length adjuster assembly 15, which in turn links to an extension cable 16 that is routed inside the shell 3. The ski-boot is closed by pushing the lever 1 down. See Baggio, column 2, line 10 to column 3, line 16.

Applicants respectfully submit that the disclosure of Baggio fails to cure the deficiencies of Marmonnier with respect to independent claim 1, as outlined in section 1 above. Specifically, Baggio fails to teach, suggest, or motivate one skilled in the art to arrive at a tightening element

biasing a closure panel against an instep area “***along a substantially downward and rearward directed load path.***” Applicants respectfully submit that the force on the front quarter 5 of the ski boot of Baggio is applied in an **upward** and rearward direction, as shown in FIGS. 1 and 2.

Additionally, Applicants’ amended independent claim 1 also recites a closure panel including “***a side region projecting to at least one of a lateral front side and a medial front side of the shoe, the side region of the closure panel attached to at least one of a lower forefoot portion of the upper and a sole of the shoe.***” Applicants respectfully submit that Baggio fails to cure the deficiencies of Marmonnier with respect to such a structure. Rather, Baggio appears to teach a rear-entrance ski-boot with a front quarter 5 fixed to a rear portion of the ski boot. See FIGS. 1 and 2. Accordingly, Baggio does not disclose a closure panel comprising “***a side region projecting to at least one of a lateral front side and a medial front side of the shoe,***” and “***attached to at least one of a lower forefoot portion of the upper and a sole of the shoe.***”

Applicants, therefore, submit that neither Marmonnier nor Baggio, alone or in proper combination, provide the teaching, suggestion, or motivation for one skilled in the art to arrive at Applicants’ invention, as recited in independent claim 1. Because claims 18 and 19 depend indirectly from independent claim 1, and include all of the limitations thereof, Applicants respectfully submit that claims 18 and 19 are allowable.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Marmonnier in view of Baggio.

4. Claims 8 and 20-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base

claim and any intervening claims.

Applicants appreciate the Examiner's indication of the allowability of claims 8 and 20-25. Applicants respectfully submit that claims 8 and 20-25 are patentable, because claims 8 and 20-25 depend indirectly from amended independent claim 1, which is patentable for the reasons discussed hereinabove. Without acquiescing to the objection, however, Applicants have rewritten claim 8 as new claim 29 incorporating the subject matter of independent claim 1 and intervening claim 2. Applicants are not rewriting claims 20-25 in independent form.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the objection to claims 8 and 20-25, as being dependent upon a rejected base claim.

5. With this Amendment and Response, Applicants hereby add new claims 30-34. Claims 30-33 depend, either directly or indirectly, from amended independent claim 1 and are patentable for at least the reasons discussed hereinabove with respect to claim 1.

Claim 34 is patentable at least because the cited art does not teach or suggest a shoe comprising ***“a tightening element coupled to the closure panel and arranged at a heel region of the shoe, at least a portion of the tightening element extending at least partially below an insole of the shoe, the tightening element operatively retaining the shoe on the foot by biasing the closure panel against the instep area along a substantially downward and rearward directed load path.”***

Accordingly, Applicants respectfully request allowance of new claims 30-34 in due course.



CONCLUSION

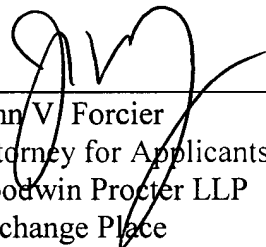
In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of all grounds of rejection and objection, and allowance of claims 1-5 and 7-34 in due course. The Examiner is invited to contact Applicants' undersigned representative by telephone at the number listed below to discuss any outstanding issues.

Respectfully submitted,

Date: August 23, 2005
Reg. No. 42,545

Customer No. 051414
Tel. No.: (617) 570-1607
Fax No.: (617) 523-1231

LIBA/1563826.1



John V. Forcier
Attorney for Applicants
Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109